

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING

GEORGE MUÑOZ,

Plaintiff,

v.

**CIVIL NO. 5:19-CV-304
(BAILEY)**

C. GOMEZ, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Mazzone [Doc. 15]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on June 23, 2020, wherein he recommends the respondent's Motion to Dismiss or for Summary Judgment [Doc. 9] be denied, respondent's Motion to Dismiss as Moot [Doc. 14] be granted, and petitioner's Petition for Writ of Habeas Corpus [Doc. 1] be dismissed as moot. For the reasons that follow, this Court will adopt the R&R.

BACKGROUND

The United States District Court for the District of New Jersey sentenced petitioner George Muñoz to sixty (60) months in federal prison for heroin trafficking. See [Doc. 10-1]. Currently, petitioner is incarcerated at the Federal Correctional Institution in Morgantown,

West Virginia. See Federal Bureau of Prisons ("BOP") Inmate Locator (www.bop.gov/inmateloc). Previously, petitioner requested a residential drug abuse treatment program ("RDAP") sentence reduction [Doc. 10-1] and filed a Petition for Writ of Habeas Corpus [Doc. 1] asking this Court to circumvent the discretion afforded to the BOP and compel the BOP to reduce his sentence. At the time petitioner filed his Petition, he was actively participating in RDAP. [Doc. 1]. However, after filing his Petition, petitioner failed the program requirements and the BOP expelled him from RDAP. See [Doc. 14-1].

Subsequent to the filing of the Petition, respondent filed a Motion to Dismiss or for Summary Judgment [Doc. 9] on May 12, 2020, and a Roseboro Notice was issued that same date [Doc. 11]. To date, petitioner has not filed a response to the Motion to Dismiss or for Summary Judgment.

On June 12, 2020, Magistrate Judge Mazzone directed respondent to file a supplemental response addressing petitioner's status in RDAP. [Doc. 13]. On June 15, 2020, respondent filed a Supplemental Response and Motion to Dismiss as Moot. [Doc. 14]. On June 23, 2020, Magistrate Judge Mazzone entered the subject R&R. [Doc. 15].

STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Nor is

this Court required to conduct a *de novo* review when the party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of receipt of the R&R, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Having filed no objections within that time frame, petitioner has waived his right to both *de novo* review and to appeal this Court's Order pursuant to 28 U.S.C. § 636(b)(1). Consequently, the R&R will be reviewed for clear error.

CONCLUSION

Having reviewed the R&R for clear error, it is the opinion of this Court that the **Report and Recommendation [Doc. 15]** should be, and is, hereby ORDERED ADOPTED for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court ORDERS that respondent's Motion to Dismiss as Moot [Doc. 14] be GRANTED, respondent's Motion

to Dismiss or for Summary Judgment [Doc. 9] be DENIED, and petitioner's Petition for Writ of Habeas Corpus [Doc. 1] be DISMISSED AS MOOT.

This Court further DIRECTS the Clerk to enter judgment in favor of the respondent and to STRIKE this case from the active docket of this Court.

It is so ORDERED.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and mail a copy to the *pro se* petitioner.

DATED: July 15, 2020.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE